IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

Assistant Commercial Tax Officer, Ward-1, Sirohi	vs.	M/s Shri Vijaya Industries, Kesarpura,Sheoganj,Sirohi

S.B. Civil Sales Tax Revision No.387/2000 against the judgment dated 19.11.1999 passed by the Rajasthan Tax Board, Ajmer in Appeal No.287/95/Sirohi.

Date of Judgment: February 23, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Sangeet Lodha for the petitioner.
Mr. Dinesh Mehta for the respondent.

BY THE COURT:

The revision has been preferred by the revenue to challenge the order of the Tax Board dated 19.11.1999 by which the Rajasthan Tax Board, Ajmer dismissed the revenue's appeal to challenge the order of the Deputy Commissioner(Appeals), Jodhpur dated 23.1.1995.

Brief facts of the case are that the respondent-assessee is a manufacturer of marble and granite slabs as well as tiles. The assessee purchased some machineries by submitting a declaration in Form ST-17 and claimed tax exemption benefit for machineries which the assessee purchased on 28.12.1987 and 26.3.1988. The cost of the machineries are Rs.3,39,000/- and Rs.22,500/-. The assessee's tax was assessed for the

Assessment Year 1987-88 but re-assessed under Section 12 of the Rajasthan sales Tax Act, 1954. The Assessing Authority held that since the assessee started commercial production from the industrial unit prior to the purchase of the machineries on 28.12.1987 and 26.3.1988, therefore, the assessee in fact already set up the industrial unit and purchased the machinery for expansion of existing industry, therefore, has not utilized the subsequently purchased machinery for setting up a new industrial unit and, therefore, the assessee is not entitled to the tax exemption benefit under the Notification 575 dated 25.9.1985.

The assessee challenged the said order of the Assessing Authority dated 31.3.1994 by preferring appeal before the Deputy Commissioner (Appeals),Commercial Taxes, Jodhpur. The Deputy Commissioner (Appeals) allowed the appeal vide order dated 23.1.1995 and held that in the Notification No.575 dated 25.9.1985, it is provided that the dealer shall be entitled to tax exemption on his purchase of machinery for setting up industry in the Rajasthan and it is not provided in the Notification that that purchase should be only for setting up "new industry." The revenue preferred appeal against the order of the Deputy Commissioner(Appeals) before the Rajasthan Tax Board Ajmer and the Tax Board also took the same view and held that the words "new industry" before the words "setting up" cannot be inserted. The order of the Tax Board has been challenged by the revenue in the background

of these facts.

The learned counsel for the petitioner submitted that this Court has already in identical facts and circumstances, interpreted words “setting up industry” with reference to the “setting up a new industry” in S.B.Civil Sales Tax Revision No. 493/2000-A.C.T.O. ,Rajsamand vs. M/s Sri Nath Minerals Industries decided on 14.11.2005. In that case, the interpretation given by the Tax Board as given in the present case, has not been accepted by this Court and this Court held that the assessee is not entitled to tax benefit in a case where new industry machineries are included in the existing industrial unit amounting to expansion of industry only.

The learned counsel for the non-petitioner assessee vehemently submitted that the judgment of this Court delivered in the case of M/s Sri Nath Minerals Industries(supra) only limited question of law has been decided and said judgment has no application in the facts of this case. In above case, the assessee claimed tax exemption on expansion of the assessee's industrial unit by purchasing machineries and that was not a case where the assessee claimed that his original plan of establishing industrial unit had very many components wherein the assessee could have started production for some of the items on availability of some machineries only and that was also not a case where the new machineries were purchased for production of goods independently or

from the product produced by the assessee itself. According to the learned counsel for the non-petitioner, it is clear from the facts mentioned in the order of the Deputy Commissioner (Appeals) that the petitioner established one industrial unit to manufacture the slabs from marble and granite blocks as well as of manufacturing marble and granite tiles. The assessee got the machinery for manufacturing the marble slabs from the marble blocks and started producing marble and granite slabs. The assessee also gave order for the machines for the manufacturing the tiles but the assessee could receive the machinery for manufacturing tiles later on, therefore, the production of slabs from marble and granite blocks is earlier in time and production from subsequently purchased machines for manufacturing the tiles was started later on. The production of each machine is independent production and without there being total production from all the machinery, it cannot be said that the assessee has completed its setting up of industry for the marble and granite slabs and tiles. According to the learned counsel for the assessee-non-petitioner, the setting up of industry may take time because of the reason that the manufacturer of the machinery may deliver the machinery at different time. In that situation, it cannot be said that on receipt of one machinery and start of production from that machinery, the assessee has completed its project for setting up of industry.

I considered the submissions of the learned counsel for the parties and perused the reasons given by the Assessing Authority as well as the two appellate authorities; the Deputy Commissioner(Appeals), Jodhpur and the Tax Board, Ajmer. I also perused the facts of the case of Sri Nath Mineral Industries(supra) and the judgment delivered in the said case.

In Sri Nath Minerals Industries' case(supra), the controversy was entirely different inasmuch in that case, the contention of the assessee itself was that he purchased the machinery for expansion of its existing industrial unit. For expansion purpose, he purchased the machinery later on after few years. In said case, it was not even the case of the assessee that his initial project of establishing the industrial unit was in phased manner and the assessee could have started the production of certain goods on receipt of the machinery and thereafter he started the production of goods from another machinery after receipt of the machinery from the vendor.

Contrary to above facts, in the present case, in the order of the Deputy Commissioner(Appeals), it is clearly mentioned that the original plan of the assessee was to set up industry for manufacturing granite and marble slabs from the marble blocks as well for manufacturing of the granite and marble tiles. It is also mentioned in the order itself that before start of the production even of marble slabs and granite slabs,

the assessee gave order for the machinery for manufacturing of marble and granite tiles. In that view of the matter, the Deputy Commissioner (Appeals) as well as the Tax Board, Ajmer rightly held that the assessee purchased all the machineries for manufacturing of the marble and granite tiles for which order was placed prior to start of production of marble and granite slabs and it is not a case of expansion of the assessee's industrial unit but is a case of setting up the industry by the assessee by installing the machines for manufacturing of granite and marble slabs and manufacturing of the marble and granite tiles. Here in this case, it may be noticed that not only the order for purchase of machinery was placed prior to production from the earlier purchased machines but there is no much gap in getting another machines for manufacturing of the marble and granite tiles.

In these circumstances, I do not find any merit in this revision and the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.